



***United States Department of Justice***

*United States Attorney  
Southern District of West Virginia*

*Robert C. Byrd United States Courthouse  
300 Virginia Street, East  
Suite 4000  
Charleston, WV 25301  
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*Mailing Address  
Post Office Box 1713  
Charleston, WV 25326  
304-345-2200  
FAX: 304-347-5104*

February 20, 2014

Arthur W. Leach, Esquire  
5780 Windward Parkway  
Suite 225  
Alpharetta, GA 30005


Samuel D. Marsh, Esquire  
Carrico Law Offices, PLLC  
1412 Kanawha Blvd., East  
Charleston, WV 25301

Re: United States v. Daniel Berg

Dear Gentlemen:

This will confirm our conversations with regard to your client, Daniel Berg (hereinafter "Mr. Berg"). As a result of these conversations, it is agreed by and between the United States and Mr. Berg as follows:

1. **CHARGING AGREEMENT.** Mr. Berg agrees to waive his right pursuant to Rule 7 of the Federal Rules of Criminal Procedure to be charged by indictment and will consent to the filing of a single-count information to be filed in the United States District Court for the Southern District of West Virginia, a copy of which is attached hereto as "Plea Agreement Exhibit A."
2. **RESOLUTION OF CHARGES.** Mr. Berg will plead guilty to a violation of 18 U.S.C. §§ 1014 and 2 (false statement to a financial institution and aiding and abetting) as charged in said information.
3. **MAXIMUM POTENTIAL PENALTY.** The maximum penalty to which Mr. Berg will be exposed by virtue of this guilty plea is as follows:

  
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- (a) Imprisonment for a period of 30 years;
- (b) A fine of \$1,000,000, or twice the gross pecuniary gain or twice the gross pecuniary loss resulting from defendant's conduct, whichever is greater;
- (c) A term of supervised release of 5 years;
- (d) A mandatory special assessment of \$100 pursuant to 18 U.S.C. § 3013; and
- (e) An order of restitution pursuant to 18 U.S.C. §§ 3663A and 3664, or as otherwise set forth in this plea agreement.

4. **SPECIAL ASSESSMENT.** Prior to the entry of a plea pursuant to this plea agreement, Mr. Berg will tender a check or money order to the Clerk of the United States District Court for \$100, which check or money order shall indicate on its face the name of defendant and the case number. The sum received by the Clerk will be applied toward the special assessment imposed by the Court at sentencing. Mr. Berg will obtain a receipt of payment from the Clerk and will tender a copy of such receipt to the United States, to be filed with the Court as an attachment to this plea agreement. If Mr. Berg fails to provide proof of payment of the special assessment prior to or at the plea proceeding, the United States will have the right to void this plea agreement. In the event this plea agreement becomes void after payment of the special assessment, such sum shall be promptly returned to Mr. Berg.

5. **PAYMENT OF MONETARY PENALTIES.** Mr. Berg agrees not to object to the District Court ordering all monetary penalties (including the special assessment, fine, court costs, and any restitution that does not exceed the amount set forth in this plea agreement) to be due and payable in full immediately and subject to immediate enforcement by the United States. So long as the monetary penalties are ordered to be due and payable in full immediately, Mr. Berg further agrees not to object to the District Court imposing any schedule of payments as merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to

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the United States to enforce the judgment.

6. **COOPERATION.** Mr. Berg will be forthright and truthful with this office and other law enforcement agencies with regard to all inquiries made pursuant to this agreement, and will give signed, sworn statements and grand jury and trial testimony upon request of the United States. In complying with this provision, Mr. Berg may have counsel present except when appearing before a grand jury. Further, Mr. Berg agrees to be named as an unindicted co-conspirator and unindicted aider and abettor, as appropriate, in subsequent indictments or informations.

7. **USE IMMUNITY.** Unless this agreement becomes void due to a violation of any of its terms by Mr. Berg, and except as expressly provided for in paragraph 10 below, nothing contained in any statement or testimony provided by Mr. Berg pursuant to this agreement, or any evidence developed therefrom, will be used against Mr. Berg, directly or indirectly, in any further criminal prosecutions or in determining the applicable guideline range under the Federal Sentencing Guidelines.

8. **LIMITATIONS ON IMMUNITY.** Nothing contained in this agreement restricts the use of information obtained by the United States from an independent, legitimate source, separate and apart from any information and testimony provided pursuant to this agreement, in determining the applicable guideline range or in prosecuting Mr. Berg for any violations of federal or state laws. The United States reserves the right to prosecute Mr. Berg for perjury or false statement if such a situation should occur pursuant to this agreement.

9. **STIPULATION OF FACTS AND WAIVER OF FED. R. EVID. 410.** The United States and Mr. Berg stipulate and agree that the facts comprising the offense of conviction and relevant conduct include the facts outlined in the "Stipulation of Facts," a copy of which is attached hereto as "Plea Agreement Exhibit B."

Mr. Berg agrees that if he withdraws from this agreement, or this agreement is voided as a result of a breach of its terms by Mr. Berg, and Mr. Berg is subsequently tried on any of the charges in

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the information, the United States may use and introduce the Stipulation of Facts in the United States case-in-chief, in cross-examination of Mr. Berg or of any of his witnesses, or in rebuttal of any testimony introduced by Mr. Berg or on his behalf. Mr. Berg knowingly and voluntarily waives, see United States v. Mezzanatto, 513 U.S. 196 (1995), any right he has pursuant to Fed. R. Evid. 410 that would prohibit such use of the Stipulation of Facts. If the Court does not accept the plea agreement through no fault of the defendant, or the Court declares the agreement void due to a breach of its terms by the United States, the Stipulation of Facts cannot be used by the United States.

The United States and Mr. Berg understand and acknowledge that the Court is not bound by the Stipulation of Facts and that if some or all of the Stipulation of Facts is not accepted by the Court, the parties will not have the right to withdraw from the plea agreement.


10. **AGREEMENT ON SENTENCING GUIDELINES.** Based on the foregoing Stipulation of Facts, the United States and Mr. Berg agree that the following provisions of the United States Sentencing Guidelines apply to this case.

Information:

USSG §2B1.1

Base offense level	7
Loss greater than \$30,000	+ 6
Adjusted Offense Level	13

The United States and Mr. Berg acknowledge and understand that the Court and the Probation Office are not bound by the parties' calculation of the United States Sentencing Guidelines set forth above and that the parties shall not have the right to withdraw from the plea agreement due to a disagreement with the Court's calculation of the appropriate guideline range.

  
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11. **WAIVER OF APPEAL AND COLLATERAL ATTACK.** Mr. Berg knowingly and voluntarily waives the right to seek appellate review of his conviction and of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is below or within the Sentencing Guideline range corresponding to offense level 13. The United States also waives its right to seek appellate review of any sentence of imprisonment or fine imposed by the District Court, or the manner in which the sentence was determined, on any ground whatsoever including any ground set forth in 18 U.S.C. § 3742, so long as that sentence of imprisonment or fine is within or above the Sentencing Guideline range corresponding to offense level 11.

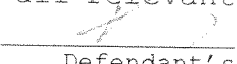
Mr. Berg also knowingly and voluntarily waives the right to challenge his guilty plea and his conviction resulting from this plea agreement, and any sentence imposed for the conviction, in any collateral attack, including but not limited to a motion brought under 28 U.S.C. § 2255.

The waivers noted above shall not apply to a post-conviction collateral attack or direct appeal based on a claim of ineffective assistance of counsel.

12. **WAIVER OF FOIA AND PRIVACY RIGHT.** Mr. Berg knowingly and voluntarily waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without any limitation any records that may be sought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, or the Privacy Act of 1974, 5 U.S.C. § 552a, following final disposition.

13. **FINAL DISPOSITION.** The matter of sentencing is within the sole discretion of the Court. The United States has made no representations or promises as to a specific sentence. The United States reserves the right to:

(a) Inform the Probation Office and the Court of all relevant

  
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facts and conduct;

- (b) Present evidence and argument relevant to the factors enumerated in 18 U.S.C. § 3553(a);
- (c) Respond to questions raised by the Court;
- (d) Correct inaccuracies or inadequacies in the presentence report;
- (e) Respond to statements made to the Court by or on behalf of Mr. Berg;
- (f) Advise the Court concerning the nature and extent of Mr. Berg's cooperation; and
- (g) Address the Court regarding the issue of Mr. Berg's acceptance of responsibility.

14. **VOIDING OF AGREEMENT.** If either the United States or Mr. Berg violates the terms of this agreement, the other party will have the right to void this agreement. If the Court refuses to accept this agreement, it shall be void.

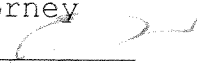
15. **ENTIRETY OF AGREEMENT.** This written agreement constitutes the entire agreement between the United States and Mr. Berg in this matter. There are no agreements, understandings or recommendations as to any other pending or future charges against Mr. Berg in any Court other than the United States District Court for the Southern District of West Virginia.

Acknowledged and agreed to on behalf of the United States:

R. BOOTH GOODWIN II  
United States Attorney

By:

  
THOMAS C. RYAN  
Assistant United States Attorney

  
Defendant's  
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I hereby acknowledge by my initials at the bottom of each of the foregoing pages and by my signature on the last page of this seven-page agreement that I have read and carefully discussed every part of it with my attorneys, that I understand the terms of this agreement, and that I voluntarily agree to those terms and conditions set forth in the agreement. I further acknowledge that my attorneys have advised me of my rights, possible defenses, the Sentencing Guideline provisions, and the consequences of entering into this agreement, that no promises or inducements have been made to me other than those in this agreement, and that no one has threatened me or forced me in any way to enter into this agreement. Finally, I am satisfied with the representation of my attorneys in this matter.

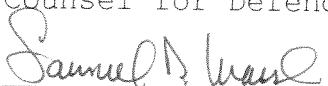
  
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DANIEL BERG  
Defendant

05/02/2014

\_\_\_\_\_  
Date Signed

  
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ARTHUR W. LEACH  
Counsel for Defendant

5-6-14  
\_\_\_\_\_  
Date Signed

  
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SAMUEL D. MARSH  
Counsel for Defendant

5/16/14  
\_\_\_\_\_  
Date Signed

15 MAY 2014

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
BLUEFIELD

UNITED STATES OF AMERICA

v.

DANIEL BERG


STIPULATION OF FACTS

The United States and Daniel Berg ("Mr. Berg") stipulate and agree that the facts comprising the offense of conviction in the Southern District of West Virginia include the following:

In the summer of 2004, Mr. Berg and another person known to the United States Attorney formed Mountain America, LLC, and purchased land near the town of Union, Monroe County for the purpose of developing a residential community. The development was referred to as the Walnut Springs Mountain Reserve. Mountain America operated primarily out of an office in the town of Lewisburg, Greenbrier County.

In April 2005, Mr. Berg assisted a person known to the United States Attorney ("Known Person One") in the submission of a loan application to the Fayetteville, Fayette County branch office of United Bank to build a home on a 5.88 acre parcel of land known as "Walnut Ridge Lot 1." On or about May 13, 2005, United Bank approved a construction loan.

On or about May 13, 2005, Mr. Berg caused Mountain America to submit a false draw request on the construction loan, requesting \$68,096 in reimbursement purportedly for construction expenses. United Bank approved the draw and deposited said funds into Mountain America's construction control checking account.

  
Defendant's  
Initials



On or about May 19, 2005, Mr. Berg wrote a check in the amount of \$37,282 from the Mountain America construction control account to Known Person One. Those funds were used by Known Person One for personal expenses wholly unrelated to the construction of a home on Walnut Ridge Lot 1.


This Stipulation of Facts does not contain each and every fact known to Mr. Berg and to the United States concerning his involvement and the involvement of others in the charges set forth in the Information, and is set forth for the limited purpose of establishing a factual basis for the defendant's guilty plea.

Stipulated and agreed to:

  
\_\_\_\_\_  
DANIEL BERG  
Defendant

05/02/2014


\_\_\_\_\_  
Date

  
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ARTHUR W. LEACH  
Counsel for Defendant

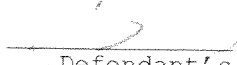
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\_\_\_\_\_  
Date

  
\_\_\_\_\_  
SAMUEL D. MARSH  
Counsel for Defendant

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
THOMAS C. RYAN  
Assistant United States Attorney

5-15-14  
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PLEA AGREEMENT EXHIBIT B